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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Policies and Rules Concerning)
Toll Fraud)

CC Docket No. 93-292

**JOINT COMMENTS OF
CLEARTEL COMMUNICATIONS, INC. AND
NORTHWEST TELECOMMUNICATIONS, INC.**

Cleartel Communications, Inc. ("Cleartel") and NorthWest Telecommunications, Inc. ("NorthWest") (hereinafter "Cleartel/NorthWest"), by their undersigned counsel and pursuant to the Commission's Notice of Proposed Rulemaking, FCC 93-496 (released December 2, 1993), hereby submit their comments in the above-referenced proceeding.

I. STATEMENT OF INTEREST AND INTRODUCTION

Cleartel and NorthWest are nondominant, regional resale interexchange carriers ("IXCs") that provide a variety of competitive long distance services. Cleartel's services include operator services to various aggregator locations, including pay telephones, as well as direct-dialed and 800 services.^{1/} NorthWest also provides competitive resold direct-dialed and 800 services to its subscribers, and NorthWest's sister company, International Pacific, Inc., provides operator services to a variety of aggregator locations. As regional IXCs,

^{1/} Cleartel is headquartered in Washington, D.C., and NorthWest is based in Spokane, Washington. Cleartel and NorthWest are not affiliated or related to each other in any way. As regional IXCs, Cleartel and NorthWest have similar interests in this proceeding, and are filing these comments on a joint basis to conserve resources and avoid duplicative filings.

Cleartel/NorthWest have a substantial interest in this proceeding, in which the Commission has pledged to work with consumers and the industry to find solutions to toll fraud problems without hindering the development of new technologies.

Cleartel/NorthWest applaud the Commission's determination to consider the establishment of specific rules and procedures to combat toll fraud. However, Cleartel/NorthWest are concerned that the Commission's proposal focuses too narrowly on the allocation of liability as a way to prevent toll fraud. As discussed below, Cleartel/NorthWest believe that the Commission's emphasis on liability apportionment issues is misplaced, and urge the Commission to commit greater effort on proposals to affirmatively prevent fraud as a common goal of carriers, equipment manufacturers and end users.

In short, Cleartel/NorthWest firmly believe that establishment of technical preventive measures against toll fraud by all affected parties provides the optimal, long-term solution to rampant toll fraud problems in the industry. The Commission should require carriers, equipment manufacturers and users to participate in an integrated effort to: (1) provide consumer education on toll fraud prevention; (2) implement available technology to protect against toll fraud; and (3) promote the enactment of federal legislation to facilitate prosecution of toll fraud perpetrators. In addition, given the impact that new technologies may have on toll fraud issues in the future, Cleartel/NorthWest support the establishment of a federal advisory committee, composed of representatives of all affected parties, that could be expeditiously convened by the Commission as needed to work on solutions to newly arising toll fraud problems that may not be adequately addressed by existing Commission requirements.

II. THE COMMISSION SHOULD PLACE GREATER EMPHASIS ON THE PREVENTION OF TOLL FRAUD, RATHER THAN FOCUSING ON ALLOCATION OF LIABILITY

As the Commission recognizes in the Notice, numerous carriers have already invested in and deployed technical measures for preventing and minimizing the incidence of toll fraud.^{2/} The development of these fraud control techniques, independent of explicit Commission rules and policies requiring such action, demonstrates the vested interests of carriers in ensuring that toll fraud is minimized to the greatest extent possible. Cleartel/NorthWest agree with the Commission, however, that with toll fraud estimated to cost the industry \$1 to \$5 billion in losses annually, it is necessary and appropriate for the Commission to undertake to establish uniform policies and rules so that the entire industry can play a role in solving the many forms of this longstanding, resource-draining problem.^{3/}

Notwithstanding their agreement with Commission rulemaking action on toll fraud, Cleartel/NorthWest are concerned that in the Notice the Commission focuses too heavily on liability apportionment as a primary vehicle for detection and prevention of toll fraud. Cleartel/NorthWest do not dispute that procedures for apportioning liability for toll fraud losses among responsible parties are an important part of a system for minimizing and resolving toll fraud problems. However, the Notice does not place enough emphasis on the development of long-term technical measures designed to prevent the fraud from occurring.

^{2/} Notice at ¶ 7.

^{3/} Id. at ¶ 4.

Rather than placing apportionment of liability at the heart of its toll fraud rules and policies, the Commission should mandate that apportionment of liability is one facet of a cooperative, industry-wide approach in which affirmative prevention of toll fraud by all affected parties is the core, guiding consideration and ultimate objective. It is neither sufficient nor appropriate to address toll fraud simply as an issue of who should pay and how much. Indeed, emphasis on apportioning liability is likely to encourage affected parties to strive to avoid liability rather than to concentrate on the development of long-term technological solutions to toll fraud problems. Accordingly, the Commission's rules and policies should affirmatively seek to guard against the occurrence of toll fraud by directly requiring all affected parties to implement minimum technical standards for improving and maintaining the security of public and private networks and line information databases ("LIDB").

Consistent with that goal, Cleartel/NorthWest provide below approaches for improving the detection and prevention of LIDB, pay telephone, and PBX and direct dial toll fraud encountered in the interexchange services market.

A. LIDB Services Can Play a Stronger Role in Toll Fraud Prevention Through Greater Information Sharing of LEC Database Information With IXC's Subscribing to LIDB Services

The use of LIDB services by IXC's providing operator services has helped IXC's to track and minimize the incidence of toll fraud for certain types of traffic. Subscription to and use of a local exchange carrier ("LEC") LIDB service generally permits an IXC to verify the status of non-direct billing number, collect and calling card calls. As the Commission has discussed in the Notice and in its LIDB investigation proceeding, it is critical that LEC's

maintain the quality and integrity of information stored in the LIDB since IXC's rely heavily on the use of LIDB services to prevent operator services fraud.^{4/}

It is important to recognize, however, that numerous IXC's have independently developed in-house fraud detection and prevention systems to supplement the fraud protection capabilities provided to them through subscription to LEC LIDB services. For example, Cleartel has designed internal fraud control systems to monitor calling card patterns for the duration of calls and for the number of attempts by a calling card. In Cleartel/NorthWest's experience, IXC's are doing their part to contribute to making the use of LIDB services effective against fraud, and are supplementing their subscription and use of such LEC services with internal fraud protection systems they have independently deployed.

Cleartel/NorthWest agree that the use of LIDB services is a vital element for preventing operator services toll fraud. LIDB offerings, however, must continue to evolve and improve with new technological advancements to substantially reduce the occurrence of fraud. Cleartel/NorthWest believe that the role of LIDB in fraud prevention should be expanded and improved to permit greater interaction between IXC's and the information in the LEC's databases. Cleartel/NorthWest submit that IXC's operating today should have easier, more expeditious access to usage information from LIDB services to which they subscribe. For example, the efforts of IXC's in preventing and detecting toll fraud would be improved through easy access to the following types of real-time and historical LIDB data: current number of attempts per billing number and per day; statistical information per billing

^{4/} See Notice at ¶ 39; see also generally Local Exchange Carrier Line Information Database, CC Docket No. 92-24, FCC 93-400, Order (released Aug. 23, 1993) at ¶¶ 27-34.

number; non-real-time data such as historical calling information and account history per billing number.

Moreover, the pricing of such LIDB interactivity must be set reasonably so that it is not more expensive for an IXC to subscribe to fraud-preventing LIDB service options than it is for the IXC to undergo the risk of toll fraud based on its calling volumes. LECs must provide cost effective LIDB service options recognizing the different calling volumes and economies of scale of the numerous IXCs operating today.

In sum, Cleartel/NorthWest urge the Commission to consider ways in which LIDB services could be expanded today to improve fraud prevention by providing greater interaction between IXCs and the usage information stored in the LEC LIDBs on a cost-effective basis for all IXCs. On-demand and real-time access to usage information stored in a LIDB would enhance the ability of IXCs to implement their own internal fraud control systems, and foster the very type of coordinated effort between LECs and IXCs which the Commission calls for in the Notice.^{5/}

B. Pay Telephone Providers Should Be Responsible for Meeting Certain Threshold Fraud Control Standards

Cleartel/NorthWest believe that the Commission has made a reasonable tentative conclusion that pay telephone providers taking steps to limit their exposure to toll fraud and which are not customers of a carrier should not be required to be liable for charges generated as a result of toll fraud perpetrated through their equipment. Cleartel/NorthWest submit, however, that the Commission should spell out minimum technical standards pursuant to

^{5/} See Notice at ¶ 36.

which pay telephone equipment must be installed and operated in order for a pay telephone provider to make the showing that it has taken reasonable steps to limit the potential for toll fraud.

For example, pay telephone providers should be required to subscribe to Originating Line Screening ("OLS") and Billed Number Screening ("BNS") services as a way to reduce the risk of toll fraud. In adopting such a requirement, the Commission should specifically analyze the manner in which LECs offer these services so that subscribing pay telephone providers can be assured that the screening services operate effectively. The Commission should also ensure that LECs offer the services at reasonable, pro-competitive prices to their private pay telephone competitors.

Cleartel/NorthWest also submit that pay telephone installation procedures should be standardized through regulations in order to prevent against the incidence of toll fraud. For example, the Commission should consider requirements that pay telephone owners adopt the same installation method and procedures as their serving LEC in order to promote uniform protection of wires against physical tampering by would-be hackers "testing" the phone. Moreover, Cleartel/NorthWest also believe that pay telephone owners should be required to periodically test their installed equipment to ensure that features such as OLS and BNS are working properly. Such testing would be analogous to carrier procedures for ensuring network reliability.

In short, consistent with an industry-wide, coordinated effort to prevent toll fraud in which all parties have a responsible role, Cleartel/NorthWest submit that affirmative threshold levels of pay telephone equipment maintenance as well as subscription to protective

screening services such as OLS and BNS should be imposed on the pay telephone industry in order to minimize the exposure of pay telephones to toll fraud.

C. Direct Dial and PBX Fraud Can Be Minimized Through Customer Education About Prevention and Internal Monitoring Systems Operated By Responsible Parties

The focus of effective fraud control in direct dial services and carrier services provided to customer PBXs should also be deployment of fraud prevention measures, rather than after-the-fact liability apportionment. In particular, Cleartel/NorthWest submit that one of the most successful tools available to a carrier against toll fraud is a thorough customer education program.

In Cleartel/NorthWest's experience, the entity generally most capable of preventing direct dial and PBX fraud is the customer. As a result, Cleartel and NorthWest strive to educate customers with detailed information on how to protect against the unauthorized, fraudulent use of IXC services to which they subscribe. Consistent with a customer education approach, which many carriers industry-wide have implemented, Cleartel/NorthWest believe that the Commission should establish minimum standards to ensure that all carriers have access to and implement toll fraud prevention mechanisms for direct dial services, and provide their customers with adequate information on toll fraud risks and operation of such prevention mechanisms.

For example, NorthWest instructs its customers that travel card numbers and authorization codes for obtaining remote access to on-premises PBXs should not be shared, and must be guarded from theft similar to credit card numbers. NorthWest assists its

customers in the secure implementation of PBX account numbers, as well as the de-activation of Direct Inward Systems Access ("DISA") numbers.

NorthWest also protects its travel cards from hackers in several ways. If multiple simultaneous use of a travel card occurs, NorthWest's internal monitoring system generates a fraud report that is studied by NorthWest's customer service department to determine if fraud is suspected. Direct contact with the customer is often required to avoid inconveniencing the customer by de-activating a card that is not, in fact, being used fraudulently. Switching equipment is also capable of detecting suspected NorthWest card number hacking. The equipment flags repeated failed attempts to a particular destination number. If several invalid card numbers are entered for calls to a destination number, the destination is blocked to prevent a fraudulent call from occurring.

Similarly, Cleartel's automated systems monitor calling card patterns of its customers pursuant to established thresholds. If those limits are exceeded, then Cleartel temporarily blocks originating ANI or the authorization code until the usage can be verified with the customer by a Cleartel customer representative.

Cleartel/NorthWest submit that establishment of minimum standards that all carriers must follow to prevent PBX-based, direct dial and other forms of fraud -- which heavily emphasize customer education and awareness -- will help to ensure that carriers share the burden of preventing toll fraud. Cleartel/NorthWest believe that this technical standards and consumer education approach is far preferable to potentially unworkable liability apportionment rules which would undermine the traditional limited liability afforded to

carriers through tariffs, absent wilful misconduct or gross negligence and likely lead to an increase in toll fraud litigation.^{6/}

III. CONCLUSION

Cleartel/NorthWest commend the Commission's determination to establish rules and policies to combat toll fraud in the industry. All affected parties have a vested interest in working with the Commission and other enforcement authorities to ensure that this vexing, expensive and longstanding problem is solved as completely and as expeditiously as possible. As detailed above, Cleartel/NorthWest strongly believe that the optimal solution to toll fraud lies in the development and implementation of long-term technological measures for preventing toll fraud from occurring coupled with customer education. Cleartel/NorthWest believe that it is critical for the Commission to shift its focus in this proceeding from an "after-the-fraud" apportionment of liability approach, to the affirmative prevention of toll fraud through all technically available means.

Respectfully submitted,

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^{6/} See, e.g., Notice at ¶ 39 ("... limitation of liability provisions have long been accepted by the courts in the absence of wilful misconduct or gross negligence." [footnote omitted])